

**DELTA PROTECTION COMMISSION**

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March 13, 1998

To: Delta Protection Commission

From: Margit Aramburu, Executive Director

Subject: Status of Legislation to Extend the Sunset Date of the Commission and Amend the Delta Protection Act of 1992  
(For Commission Action)

**Background:**

At the January 1998 meeting, the Commission voted to request a ten year extension of the sunset date of the Commission. The current sunset date is January 1, 1999.

A Subcommittee meeting was scheduled to discuss possible text changes to the Delta Protection Act.

**Meetings with CALFED:**

As directed by the Commission, Ms Aramburu met with Lester Snow, Director of the CALFED program. They discussed the two programs working together to ensure that any CALFED program would be carried out with consideration of the Commission's adopted "Land Use and Resource Management Plan for the Primary Zone of the Delta". No specific programs or tasks were suggested or discussed. Mr. Snow suggested a meeting with Senator Johnston and Tom Zuckerman of the South Delta Water Agency.

A second meeting was held with Mr. Snow, Chairman Pat McCarty, Ms Aramburu, Mr. Zuckerman, representatives of the Attorney General's Office, and Senator Patrick Johnston and his chief of staff, Ross Sargent. Again, the meeting was general, discussing implementation of a CALFED program in the Delta region in light of the Commission's adopted Plan.

#### Subcommittee Meeting:

A "Future of the Commission" Subcommittee meeting was held on Thursday, February 26, 1998, to discuss possible changes to the text of the Delta Protection Act. Ten Commissioners and a soon to be sworn in Commissioner attended; there were a few members of the public present.

The Subcommittee recommended making only minimal changes to the Act.

One possible change would be to stagger, or delete the limit on the number of terms on the Commission for the Reclamation District members, noting that if the Commission's sunset date is extended, all five RD representatives would "term out" at the same time.

#### Legislative Hearing:

The first hearing on the proposed amendment is scheduled for Monday, March 16, 1998, before the Assembly Natural Resources Committee. Chairman McCarty and Commissioner Harris have agreed to attend and testify.

#### 1998 Schedule of the Legislature:

July 3 is the last day for policy committees to meet and report bills to the floor; summer recess starts.

August 14 is the last day for fiscal committees to meet and report bills to floor.

August 31 is the last day for each house to pass bills.

September 30 is the last day for the Governor to sign or veto bills.

#### Staff Recommendation:

The Commission should consider the recommendations of the Subcommittee and determine if any additional amendments to the Delta Protection Act should be forwarded to the Legislature for consideration.

#### Current Text:

Attached is a copy of the text of SB 1075 as amended on February 26, 1998, by Senator Johnston.

# SB 1075 Delta Protection Commission.

**BILL NUMBER: SB 1075 AMENDED 02/26/98**

AMENDED IN ASSEMBLY FEBRUARY 26, 1998

AMENDED IN SENATE APRIL 2, 1997

**INTRODUCED BY Senator Johnston (Coauthors: Assembly Members Machado, Thomson, and Torlakson) (Coauthor: Senator Rainey)**

**FEBRUARY 28, 1997**

An act to amend Sections 29759, 29760, 29761.5, 29762, 29763, 29763.5, 29764, 29767, 29770, 29771, 29772, and 29780 of, *to add Section 29756.5 to*, and to repeal Section 29729 of, the Public Resources Code, relating to the Sacramento-San Joaquin Delta.

## LEGISLATIVE COUNSEL'S DIGEST

SB 1075, as amended, Johnston. Delta Protection Commission.

~~Existing—~~

*(1) Existing law, the Johnston-Baker-Andal-Boatwright Delta Protection Act of 1992, creates the Delta Protection Commission and requires the commission to prepare and adopt a comprehensive long-term resource management plan for specified lands within the Sacramento-San Joaquin Delta.*

~~The commission will~~ *Existing law provides that the commission would be abolished on January 1, 1999.*

~~This bill would make various clarifying and technical changes in provisions of the act, would extend to January 1, 2010, the date on which the commission would be abolished, and would authorize the commission to act as the facilitating agency for the implementation of any joint habitat restoration or enhancement programs located within the primary zone of the delta.~~

*The bill would impose a state-mandated local program since it would extend the existence of the commission and the existing act requires, within 180 days of the adoption of any amendment to the regional plan by the commission, that all local governments, as specified, submit to the commission proposed amendments that will cause their general plans to be consistent with specified criteria.*

*(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that no reimbursement is required by this act for a specified reason.*

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: ~~no~~-yes.

SECTION 1. Section 29729 of the Public Resources Code is repealed.

SEC. 2. *Section 29756.5 is added to the Public Resources Code, to read:*

*29756.5. The commission may act as the facilitating agency for the implementation of any joint*

*habitat restoration or enhancement programs located within the primary zone of the delta.*

*SEC. 2.5. Section 29759 of the Public Resources Code is amended to read:*

29759. The commission shall be abolished as of January 1, ~~1999~~–2010, and, if provided for by the Legislature, a successor agency shall administer this division on and after that date.

*SEC. 2.7. Section 29760 of the Public Resources Code is amended to read:*

29760. (a) Not later than October 1, 1994, the commission shall prepare and adopt, by a majority vote of the membership of the commission, and thereafter review and maintain, a comprehensive long-term resource management plan for land uses within the primary zone of the delta. The resource management plan shall consist of the map of the primary zone and text or texts setting forth a description of the needs and goals for the delta and a statement of the policies, standards, and elements of the resource management plan.

(b) The resource management plan shall meet the following requirements:

- (1) Protect and preserve the cultural values and economic vitality that reflect the history, natural heritage, and human resources of the delta.
  - (2) Conserve and protect the quality of renewable resources.
  - (3) Preserve and protect agricultural viability.
  - (4) Restore, improve, and manage levee systems by promoting strategies, including, but not limited to, methods and procedures which advance the adoption and implementation of coordinated and uniform standards among governmental agencies for the maintenance, repair, and construction of both public and private levees.
  - (5) Preserve and protect delta dependent fisheries and their habitat.
  - (6) Preserve and protect riparian and wetlands habitat, and promote and encourage a net increase in both the acreage and values of those resources on public lands and through voluntary cooperative arrangements with private property owners.
  - (7) Preserve and protect the water quality of the delta, both for instream purposes and for human use and consumption.
  - (8) Preserve and protect open-space and outdoor recreational opportunities.
  - (9) Preserve and protect private property interests from trespassing and vandalism.
  - (10) Preserve and protect opportunities for controlled public access and use of public lands and waterways consistent with the protection of natural resources and private property interests.
  - (11) Preserve, protect, and maintain navigation.
  - (12) Protect the delta from any development that results in any significant loss of habitat or agricultural land.
  - (13) Promote strategies for the funding, acquisition, and maintenance of voluntary cooperative arrangements, such as conservation easements, between property owners and conservation groups that protect wildlife habitat and agricultural land, while not impairing the integrity of levees.
  - (14) Permit water reservoir and habitat development that is compatible with other uses.
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(c) The resource management plan shall not supersede the authority of local governments over areas within the secondary zone.

(d) To facilitate, in part, the requirements specified in paragraphs (8), (9), (10), and (11) of subdivision (b), the commission shall include in the resource management plan, in consultation with all law enforcement agencies having jurisdiction in the delta, a strategy for the implementation of a coordinated marine patrol system throughout the delta that will improve law enforcement and coordinate the use of resources by all jurisdictions to ensure an adequate level of public safety. The strategic plan shall identify resources to implement that coordination. The commission shall have no authority to abrogate the existing authority of any law enforcement agency.

(e) To the extent that any of the requirements specified in this section are in conflict, nothing in this division shall deny the right of the landowner to continue the agricultural use of the land.

SEC. 3. Section 29761.5 of the Public Resources Code is amended to read:

29761.5. Not later than January 7, 1995, the commission shall transmit copies of the resource management plan to the Governor. Copies of the resource management plan shall be made available, upon request, to Members of the Legislature.

SEC. 4. Section 29762 of the Public Resources Code is amended to read:

29762. The commission shall adopt, by a majority vote of the membership of the commission, the resource management plan after at least three public hearings, with at least one hearing held in a city in the north delta, the south delta, and the west delta.

SEC. 5. Section 29763 of the Public Resources Code is amended to read:

29763. Within 180 days from the date of the adoption of the resource management plan or any amendments by the commission, all local governments shall submit to the commission proposed amendments that will cause their general plans to be consistent with the criteria in Section 29763.5 with respect to land located within the primary zone.

SEC. 6. Section 29763.5 of the Public Resources Code is amended to read:

29763.5. The commission shall act on proposed local government general plan amendments within 60 days from the date of submittal of the proposed amendments. The commission shall approve the proposed general plan amendments by a majority vote of the commission membership, with regard to lands within the primary zone, only after making all of the following written findings as to the potential impact of the proposed amendments, to the extent that those impacts will not increase requirements or restrictions upon agricultural practices in the primary zone, based on substantial evidence in the record:

(a) The general plan, and any development approved or proposed that is consistent with the general plan, are consistent with the resource management plan.

(b) The general plan, and any development approved or proposed that is consistent with the general plan, will not result in wetland or riparian loss.

(c) The general plan, and development approved or proposed that is consistent with the general plan, will not result in the degradation of water quality.

(d) The general plan, and any development approved or proposed that is consistent with the general

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plan, will not result in increased nonpoint source pollution.

(e) The general plan, and any development approved or proposed that is consistent with the general plan, will not result in the degradation or reduction of Pacific Flyway habitat.

(f) The general plan, and any development approved or proposed that is consistent with the general plan, will not result in reduced public access, provided the access does not infringe on private property rights.

(g) The general plan, and any development approved or proposed that is consistent with the general plan, will not expose the public to increased flood hazard.

(h) The general plan, and any development approved or proposed that is consistent with the general plan, will not adversely impact agricultural lands or increase the potential for vandalism, trespass, or the creation of public or private nuisances on public or private land.

(i) The general plan, and any development approved or proposed that is consistent with the general plan, will not result in the degradation or impairment of levee integrity.

(j) The general plan, and any development approved or proposed that is consistent with the general plan, will not adversely impact navigation.

(k) The general plan, and any development approved or proposed that is consistent with the general plan, will not result in any increased requirements or restrictions upon agricultural practices in the primary zone.

SEC. 7. Section 29764 of the Public Resources Code is amended to read:

29764. This division does not confer any permitting authority upon the commission or require any local government to conform their general plan, or land use entitlement decisions, to the resource management plan, except with regard to lands within the primary zone. The resource management plan does not preempt local government general plans for lands within the secondary zone.

SEC. 8. Section 29767 of the Public Resources Code is amended to read:

29767. The commission may not exercise the power of eminent domain in implementing the resource management plan, unless requested by the landowner.

SEC. 9. Section 29770 of the Public Resources Code is amended to read:

29770. (a) Any person who is aggrieved by any action taken by a local government or other local agency in implementing the resource management plan, or otherwise taken pursuant to this division, may file an appeal with the commission. The ground for an appeal and the commission consideration of an appeal shall be that an action, as to land located exclusively within the primary zone, is inconsistent with the resource management plan, the approved portions of local government general plans that implement the resource management plan, or this division. The appeal shall be heard by the commission within 60 days from the date of the filing of the appeal, unless the commission, either itself or by delegation to the executive director, determines that the issue raised on appeal is not within the commission's jurisdiction or does not raise an appealable issue.

(b) The commission shall, by regulation, adopt administrative procedures governing those appeals.

SEC. 10. Section 29771 of the Public Resources Code is amended to read:

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29771. After a hearing on an appealed action, the commission shall either deny the appeal or remand the matter to the local government or local agency for reconsideration, after making specific findings. Upon remand, the local government or local agency may modify the appealed action and resubmit the matter for review to the commission. A proposed action appealed pursuant to this section shall not be effective until the commission has adopted written findings, based on substantial evidence in the record, that the action is consistent with the resource management plan, the approved portions of local government general plans that implement the resource management plan, and this division.

SEC. 11. Section 29772 of the Public Resources Code is amended to read:

29772. An aggrieved person may seek judicial review of any action taken by the commission in adopting the resource management plan or any action taken by a local government or other local agency that is appealable pursuant to subdivision (a) of Section 29770, by filing a petition for writ of mandate in accordance with Section 1094.5 of the Code of Civil Procedure within 60 days from the date that the commission action was taken or, if appealed to the commission, within 60 days from the final decision of the commission on the appeal.

SEC. 12. Section 29780 of the Public Resources Code is amended to read:

29780. On January 1 of each year, the commission shall submit to the Governor and the Legislature a report describing the progress that has been made in achieving the objectives of this division. The report shall include, but not be limited to, all of the following information:

(a) An evaluation of the effectiveness of the resource management plan in preserving agricultural lands, restoring delta habitat, improving levee protection and water quality, providing increased public access and recreational opportunities, and in undertaking other functions prescribed in this division.

(b) An update of the resource management plan, using baseline conditions set forth in the original resource management plan.

(c) The status of the environmental thresholds established by the commission in the original resource management plan.

*SEC. 13. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.*

*Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.*



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